IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 677 OF 2000

IN

WRIT PETITION NO. 2093 OF 1998

Rashtriya Chemicals & Fertilizers Ltd. .. Appellants

Versus

1(a) Smt. Meena Pravin Jadhav & Ors. .. Respondents

Mr. J.P.Cama, Senior Advocate, with M/s. Satya Priya Rao and Mr. Ajay Khaire i/b. M/s. Bodhanwalla & Co.Advocates for the appellants.

Mr. A.S.Peerzada i/b. Mr. Pethe, for Respondents.

CORAM: D.K.DESHMUKH &

J.H.BHATIA,JJ.

DATE: 23rd October,2007.

P.C.

1. This Appeal is directed against the order dated 29th June, 2000 passed by a learned Single Judge of this Court in Writ Petition No.2093 of 1999. That Writ Petition was filed by the respondent challenging the awards made by the Labour Court. The awards were made by the Industrial Court because of references made by the appropriate Boards. The Reference was of dispute

between the present appellant Rashtriya Chemicals and Fertilizers Ltd. and five employees. After the reference was made, the employees filed their statement of claim before the Industrial Court. It was their case that they were in the employment of the appellant from the dates which were mentioned in their statement of claim and, according to them, the termination of their service was contrary to law and, therefore, they were entitled to reinstatement in service with full back wages as also permanency in service.

2. The principal defence of the appellant was that the employees were appointed by various appointment orders for different periods and their appointment was for a fixed period and their appointment on each occasion came to an end by efflux of time fixed in the appointment order and, therefore, discontinuation from service of the employees does not amount to retrenchment in view of the definition of the term "retrenchment" contained in Section 2(oo) of the Industrial Disputes Act, 1947 (hereinafter for short, "the said Act"). Thereafter, the parties led documentary and oral evidence. The references were tried together but the Tribunal made separate award in relation to each reference. The Tribunal held that the employees have not been able to establish that they have been in the employment for a period of 240 days in a year.

Therefore, they are not entitled to permanency under Model Standing Order No.4-C. The Industrial Court also came to the conclusion that their appointment was for a fixed tenure on each occasion. In view of the definition of the term "retrenchment" in Section 2(oo) of the said Act, discontinuation of the employees does not amount to retrenchment and, therefore, the provisions of Section 25F are also not attracted. Against these awards, one petition was filed challenging all the awards. That was registered as Writ Petition No.2093 of 1998. The Writ Petition was decided by a learned Single Judge by order dated 29.6.2000. The learned Single Judge, except the employee by name Bhagwan Shinde, came to the conclusion that four employees had completed 240 days of continuous service and, therefore, in terms of Model Standing Order 4-B, they were entitled to permanency in service. The learned Single Judge held that because he has held that these employees are entitled to permanency, there is no question of considering the provisions of Section 2(oo) of the said Act. The learned Single Judge held that assuming that discontinuation does not amount to retrenchment under Section 2 (oo) of the said Act because the employees have attained permanency because of the operation of the Standing Order, their services could not have been terminated without complying with the requirements of the statute. It is this judgment of

the Labour Court which is challenged in the present petition.

3. In order to find out whether the finding recorded by the learned Single Judge in relation to the four employees, for the first time in a writ petition, that they have completed 240 days of continuous service, we went through the record and on enquiry we find that so far as the employee Pravin Jadhav is concerned, he has completed 240 days of service in 12 months before the date of his termination, but he was not continuously in service for 240 days. So far as the employee K.Gopal is concerned, he has completed 242 days of service preceding 12 months of his termination, but again it is not continuous service. So far as the employee Shahid Ahmed Siddique is concerned, he has completed 294 days of service in preceding 12 months of his termination, but is not continuous service. So far as the employee Shinde is concerned, he has completed 294 days in preceding 12 months of his termination, but again it is not continuous service. So far as the employee Shinde is concerned, the learned single Judge has found that he has not completed 240 days of complete service preceding his termination. Thus, we find that none of the employees can be said to have completed 240 days of continuous service is preceding 12 calendar months of the termination of their service. The finding of the

learned Single Judge that because of the Model Standing Order 4B, the employees attained permanency is clearly wrong and contrary to the record. Clause 4B of the Model Standing Order reads as under :-

> "4-B. A temporary workman, who has put in 190 days uninterrupted service in the aggregate in any establishmentof a seasonal nature or 240 days, uninterrupted service in the aggregate in any other establishment during a period of preceding twelve calendar months, shall be made permanent in that establishment by an order in writing signed by the Manager, or any person authorised in that behalf by the Manager, irrespective of whether or not his name is on the muster roll of the establishment throughout the period of the said twelve calendar months."

Perusal of the clause 4B quoted above shows it casts duty on employer to confirm an employee in service on his completing 240 days uninterrupted service in the aggregate during a period of preceding twelve calendar months. We found that none of the employees had to their credit 240 days of uninterrupted service during the period of twelve months before termination of their service. Therefore, that finding recorded by learned Single Judge has to be set aside.

4. The learned Counsel appearing for the employees submitted that even if they have not completed 240 days of continuous service in the preceding 12 months, still as they have completed 240 days of service in the 12 months, their termination will be bad as it violates Section 25F of the Industrial Disputes Act. Perusal of the provision of Section 25F shows that it relates to retrenchment. The term ‘retrenchment’ is defined by section 2(oo) of the said Act. It reads as under :-

> "2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -
>
> (a) voluntary retirement of the workman; or
>
> (b) retirement of the workman on reaching the age of superannuation f the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
>
> (bb) termination of the service of the workman as a result of the non-renewal of the contract

of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

(c) termination of the service of a workman on the ground of continued ill-health;] "

Perusal of the above quoted provisions shows that termination of a workmen does not amount to retrenchment if an employee was appointed under a contract of employment for a fixed period and the termination of service occurs because of expiry of his tenure. Perusal of the order of the learned Single Judge shows that even the learned Single Judge has found that the provisions of Section 2(oo)(bb) would be attracted. But according to him, because of his finding that the workmen had attained permanency and as their termination is contrary to the Standing Orders, that their termination does not amount to retrenchment within the meaning of Section 2(oo)(bb) is not material. The Industrial Court has also found that the discontinuation of service of the employees does not amount to retrenchment because of Section 2(oo)(bb).

5. The learned Counsel appearing for the employees relied upon a Judgment of a learned Single Judge of this

Court in the case of **Dilip Hanumantrao Shirke & Ors. vs. Zilla Parishad, Yavatmal & Ors.** and specially the observations in para 7 of the Judgment. A perusal of those observations shows that the leaned Single Judge has held that if the employer adopts device of giving fixed term appointment order in order to avoid benefit of various provisions of the Industrial Disputes Act, then the Court can hold enquiry to find out whether the provisions of Section 2(oo)(bb) will be attracted. In the present case, there are no pleadings to be found that the appointment order for fixed duration given by the employer was a device adopted by the employer to deny the benefit of various protections under the Industrial Disputes Act to the employee. We find that the provisions of Section 2(oo)(bb) have been considered by the Supreme Court in various Judgments. In the Judgment in the case of **M. Venugopal vs. Life Insurance Corporation of India, Machilipatnam, A.P. & Anr. 1994 I CLR 544,** the Supreme Court has considered the provisions of Section 2(oo)(bb) and has held that if the appointment is for a fixed tenure and the contract comes to an end because of the expiry of the tenure, then it does not amount to retrenchment within the meaning of the Industrial Disputes Act. The same view has been taken by the Supreme Court in its subsequent judgment in the case of **Haryana State F.C.C.W. Stores Ltd. and another vs. Ram Niwas and Anr. (2002) 5 SCC**

654 and another Judgment in the case of **Managing Director, Karnataka Handloom Devl. Corpn. Ltd. vs. Sri Mahadeva Laxman Raval, reported in 2007 I CLR 25.** Really speaking, it is not necessary for us to hold an enquiry into this aspect of the matter because the Industrial Court has found that the provisions of Section 2(oo)(bb) are attracted in this case and that finding has not been disturbed by the learned Single Judge. He has only held that the impact of the provisions of Section 2(oo)(bb) need not be considered by him because he has held that employees attained permanency because of the Standing Orders.

6. Taking overall view of the matter, therefore, as we find that the finding recorded by the learned Single Judge that the respondents had attained permanency because of clause 4-B of Model Standing Order that finding is an incorrect finding, the Appeal deserves to be allowed. It is accordingly allowed. The order passed by the learned Single Judge dated 29th June, 2000 in Writ Petition No. 2093 of 1998 is set aside. The awards made by the Industrial Court which were impugned in the Writ Petition are restored.

The Appeal is disposed of.

(D.K.DESHMUKH,J.)

(J.H.BHATIA,J.)